

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 14

ROAD & RAIL SERVICES, INC.

Employer

and

Case 14-RC-12699

AUTOMOBILE TRANSPORT CHAUFFEURS
DEMONSTRATORS AND HELPERS UNION,
TEAMSTERS LOCAL 604

Petitioner

and

INTERNATIONAL ASSOCIATION OF BRIDGE,
STRUCTURAL, ORNAMENTAL AND REINFORCING
IRON WORKERS

Party to the Contract

**ORDER WITHDRAWING NOTICE OF HEARING
AND DISMISSING PETITION**

On February 11, 2008, the Petitioner filed a petition in the above matter seeking an election among certain employees of the Employer.

On February 11, 2008, a Notice of Hearing issued for February 19, 2008, which hearing was rescheduled for February 27, 2008. The hearing opened on February 27, 2008, was continued to March 5, 2008, and was later postponed indefinitely pending an administrative investigation. On March 19, 2008, the parties were ordered to show cause as to whether the petition should be dismissed on the basis of contract bar.

As a result of an administrative investigation, further proceedings are not warranted.

The investigation revealed uncontradicted evidence that the Employer and Iron Workers entered into a multi-facility contract and a local addendum on behalf of Shopmen's Local Union No. 518. The master agreement was signed by both parties on June 28, 2007, and is effective

by its terms from June 1, 2007, through May 31, 2013. The addendum was signed by the Employer on August 6, 2007, and by the Iron Workers on August 7, 2007. The addendum is effective by its terms from July 9, 2007, through July 8, 2011. In its response to the Order to Show Cause, the Petitioner voices its suspicions about the execution of the two parts of the contract, but it proffered no evidence in support of these suspicions and nothing to call into question the results of the investigation. Thus, prior to the petition here, there existed a signed agreement, covering the petitioned-for employees, which set forth substantial terms and conditions of employment. Accordingly, there is a contract bar to the instant petition. *Appalachian Shale Products Co.*, 121 NLRB 1160 (1958).

The Petitioner urges that the contract should not constitute a bar because the Iron Workers are “defunct.” The test of defunctness is that a labor organization is unable or unwilling to represent the employees in the unit. *Hershey Chocolate Corp.*, 121 NLRB 901 (1958). There is no evidence proffered or uncovered to even suggest that the Iron Workers are unable to represent the petitioned-for employees. Further, the Iron Workers’ participation in this matter demonstrates its willingness to represent the employees. The Petitioner points to evidence of an incident in which an employee complained to the Iron Workers about certain contractual provisions mid-term, and was told there was nothing the Iron Workers could do. The Petitioner also relies on the failure of the Iron Workers to enforce provisions of the contract, and on the absence of members from the unit despite a union-security clause. Such factors are insufficient to show that an otherwise functioning labor organization is defunct. Indeed, inactivity of a labor organization does not equate to defunctness. *The Kent Corporation*, 272 NLRB 735 (1984). Accordingly, I reject the Petitioner’s claim that the Iron Workers is defunct.

The Regional Director having fully and carefully considered the matter,

IT IS HEREBY ORDERED that the Notice of Hearing issued is withdrawn.

IT IS FURTHER ORDERED that the petition is dismissed.

Your Right to Request Review: The National Labor Relations Board Rules and Regulations permit you to obtain a review of this action by filing a request for review with the National Labor Relations Board. If you wish to file a request for review, your attention is directed to the following:

Request for Review Due Date: The request for review must be received by the National Labor Relations Board in Washington, D.C. by the close of business at 5 p.m. (EDT) on May 5, 2008. However, if you mail the request for review, it will be considered timely if it is postmarked no later than one day before the due date. The request for review **MAY NOT** be filed by facsimile transmission.

Extension of Time to File Request for Review: Upon good cause shown, the Board may grant special permission for a longer period to file the request for review. Any request for an extension of time should be submitted to the Executive Secretary of the Board in Washington, D.C., and **must** be received no later than the request for review due date indicated above. The request for an extension of time may be filed by mail or by facsimile transmission. The fax number is (202) 273-4270. A copy of any request for an extension of time should be sent to me. The National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with the Board in Washington, D.C. If a party wishes to file one of these documents electronically, please refer to the Attachment supplied with this Order for guidance in doing so. The guidance can also be found under “E-Gov” on the National Labor Relations Board website: www.nlrb.gov.

Request for Review Contents: The request for review must contain a complete statement setting forth the facts and the reasons why you want a review of the decision to dismiss the petition.

Address for Request for Review: The request for review should be addressed to the Executive Secretary, National Labor Relations Board, Franklin Court Building, 1099 14th Street, N.W., Washington, D.C. 20570.

Notice of Other Parties of Request for Review: You should send a copy of the request for review to me and to the other parties shown below.

April 21, 2008

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